

## **An Agreement for the Provision of Limited Professional Services**

**Design Professional Firm:** Terry O. Brown, P.E.  
P. O. Box 92051  
Albuquerque, NM 87199

**Client:** City of Gallup  
110 W. Aztec  
Gallup, NM 87301  
Albuquerque, NM 87109

**Date:** March 2, 2020

**Project No.:** 20-03-02

**Project Name / Location:** Wilson Industrial/Construction Supply – Gallup (Park Ave. / NM 602)

### **Scope of Services:**

- Coordinate with Jayson Grover, P.E. from the New Mexico Department of Transportation District 6 Office to obtain outline of report criterion.
- Calculate Trip Generation volumes based on site plan provided by the developer or developer's representative (square footage of building proposed and other land uses on site shall be defined on site plan.) Developer and/or developer's architect/engineer shall notify me of any significant updates to the proposed site plan that would change the nature of the Traffic Impact Study (i.e., changes in land use, square footage of buildings, locations and numbers of access driveways, etc.) The current project is described as the development of a proposed 68,348 s.f. of Home Improvements Superstore, a 3,200 s.f. Gas House, a 1,950 s.f. Wash Bay, and approximately 25,000 s.f. of retail commercial uses including the hard northeast corner of Park Ave. / 602 ByPass Rd. building.
- Perform Weekday AM and PM Peak Hour Traffic Counts (demand volumes) for the existing intersections of Nizhoni Blvd. (Mendoza Rd.) / NM S.R. 602, W. Aztec Ave. / NM S.R. 602, and Park Ave. / NM S.R. 602. Also perform Saturday Peak Hour Traffic Counts (10 AM to 1 PM). Perform six day tube counts on NM State Rd. 602 north of Park Ave. and on Park Ave. east of NM State Rd. 602. Tube counts will be used to establish weekday and weekend peak hour periods and volumes and will aid in Traffic Signal Warrant Analysis.
- Determine Trip Distribution and Trip Assignments of the newly generated traffic based on Mid-Region Council of Governments' Socioeconomic Forecasts for the implementation year ( $\pm 2022$ ) and for the horizon year (2032) as agreed upon in the scoping meeting. Trip Distribution / Trip Assignments will be calculated based on directional trends of existing traffic derived from recent traffic counts.
- Determine "NO BUILD" and "BUILD" traffic intersection volumes for the implementation year (2022) and for the horizon year (2032).
- Utilize the implementation year "NO BUILD" and "BUILD" traffic volumes to perform signalized and / or unsignalized intersection analyses (AM and PM weekday Peak and Saturday Peak) for the following intersections:
  1. Nizhoni Blvd. (Mendoza Rd.) / NM S.R. 602
  2. W. Aztec Ave. / NM S.R. 602
  3. Park Ave. / NM S.R. 602
  4. Access Driveways (2)
- Perform queuing analysis for each lane group for each approach for every intersection analyzed in this study.
- Evaluate access intersections and driveways to determine warrants for auxiliary deceleration lanes (right turn and left turn).
- Perform safety analysis based on Highway Safety Manual for Traffic Impact Study area of analysis (intersections and roadway links).
- Write a report of analysis and findings to present to the New Mexico Department of Transportation for review and comment.
- Make recommendations for necessary measures to mitigate impact of this development on the adjacent transportation system.
- Address comments from the New Mexico Department of Transportation regarding technical aspects of the Traffic Impact Study.

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**Fee Arrangement:** \$ 24,250.00 plus applicable taxes  
\$ 1,909.69 NM G.R. Tax

**Retainer Amount:** N/A

- Special Conditions:**
1. Additional Peak Hour Traffic Counts required by City, County, or Department of Transportation is \$500 per intersection. Additional analysis required for intersections not listed in Scope of Services is \$ 1,000 per intersection.
  2. Special services not defined in the Scope of Services will be on Time & Materials basis at \$ 150.00 per hour.
  3. If required, apart from the technical aspects of the report, additional fee for time to negotiate the offsite mitigation improvements or other issues associated with this project will also be charged at the normal billing rate of \$150.00 per hour.
  4. Right-of-way research, if required, shall be by others.
  5. Additional costs for printing, aerial photos, Agency submittal / review fees, and third party services shall be charged to the client in addition to the above stated fee.
  6. Should the Client decide to place the project on hold or for any other reason discontinue these services prior to the submission of the report for review, the Client must notify the Firm in writing and the Firm will subsequently send the Client an invoice based on the Firm's billing rate of \$150.00 per hour plus direct cost of materials used on project. The invoice will be for services rendered up to the time the written notice to stop work was received.
  7. Time to complete the draft TIS and submit it for review - 9 weeks from date of notice to proceed.

**Prepared by:** Terry O. Brown, P.E.

**Offered by:**

  
\_\_\_\_\_  
Signature

03/02/2020  
\_\_\_\_\_  
Date

**Terry O. Brown, Owner**

Printed Name / Title

**Terry O. Brown, P. E.**

Name of Design Firm

**Accepted by:**

\_\_\_\_\_  
Client Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name / Title

\_\_\_\_\_  
Name of Client

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip

The *Terms and Conditions* attached to this form are a part of this Agreement.

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### Terms and Conditions

The Firm shall perform the services outlined in this agreement for the stated fee arrangement.

#### Access To Site:

Unless otherwise stated, the Firm will have access to the site for activities necessary for the performance of the services. The Firm will take precautions to minimize damage due to these activities, but has not included in the fee the cost of restoration of any resulting damage.

#### Dispute Resolution:

Any claims or disputes made during design, construction or post-construction between the Client and Firm shall be submitted to non-binding mediation. Client and Firm agree to include a similar mediation agreement with all contractors, subcontractors, subconsultants, suppliers and fabricators, thereby providing for mediation as the primary method for dispute resolution between all parties.

#### Billings/Payments:

Invoice(s) for the Firm's services shall be submitted upon submittal of the report or plans to the reviewing agency. Invoices shall be payable by Client upon receipt. If the invoice is not paid within 30 days, the Firm may, without waiving any claim or right against the Client, and without liability whatsoever to the Client, terminate the performance of the service. Retainers shall be credited on the final invoice.

#### Late Payments:

Accounts unpaid 60 days after the invoice date may be subject to a monthly service charge of 1.0% (or the legal rate) on the then unpaid balance. In the event any portion or all of an account remains unpaid 90 days after billing, the Client shall pay all costs of collection, including reasonable attorney's fees.

#### Indemnification:

The Client shall, to the fullest extent permitted by law, indemnify and hold harmless the Firm, his or her officers, directors, employees, agents and subconsultants from and against all damage, liability and cost, including reasonable attorney's fees and defense costs, arising out of or in any way connected with the performance by any of the parties above named of the services under this agreement, excepting only those damages, liabilities or costs attributable to the sole negligence or willful misconduct of the Firm.

#### Certifications:

Guarantees and Warranties: The Firm shall not be required to execute any document that would result in its certifying, guaranteeing or warranting the existence of conditions whose existence the Firm cannot ascertain.

#### Limitation of Liability:

In recognition of the relative risks, rewards and benefits of the project to both the Client and the Firm, the risks have been allocated such that the Client agrees that, to the fullest extent permitted by law, the Firm's total liability to the Client for any and all injuries, claims, losses, expenses, damages or claim expenses arising out of this agreement from any cause or causes, shall not exceed the amount of the fee as stated in this Agreement or \$ 50,000, whichever is greater. Such causes include, but are not limited to, the Firm's negligence, errors, omissions, strict liability, breach of contract or warranty.

#### Termination of Services:

This agreement may be terminated by the Client or the Firm should the other fail to perform its obligations hereunder. In the event of termination, the Client shall pay the Firm for all services rendered to the date of termination, all reimbursable expenses, and reimbursable termination expenses.

#### Ownership of Documents:

All documents produced by the Firm under this agreement shall remain the property of the Firm and may not be used by the Client for any other endeavor without the written consent of the Firm.